In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 1139

GULF STEVEDORE CORPORATION, ET AL., PETITIONERS

v.

BERTRAM A. WATSON, and R. J. SHEA,
DEPUTY COMMISSIONER

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT DEPUTY COMMISSIONER IN OPPOSITION

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1. On February 6, 1957, respondent Bertram A. Watson sustained an injury compensable under the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. 901, *et seq.*, when a load of scrap iron crushed his left leg, resulting in its amputation below the knee (Pet. App. B6).[1] The respondent Deputy

[1] "Pet. App." refers to the appendix to the petition for a writ of certiorari. "R." refers to the Transcript of Record, a copy of which has been lodged with the Clerk of this Court.

Commissioner found that a "cross-leg graft" (an unsuccessful surgical procedure designed to save the left leg) had caused "significant disability" to Watson's right leg (R. 148). Based upon these findings, and considering Watson's age (45 years), experience (longshore and other physical work) and education (eighth-grade), the Deputy Commissioner determined that Watson was permanently and totally disabled within the meaning of the Longshoremen's Act (R. 147-150) and awarded him compensation benefits under that Act.

Watson's employer and its insurance carrier, petitioners here, then brought this action to set aside the Deputy Commissioner's award (Pet. App. C1). The district court ruled that substantial evidence did not support the Deputy Commissioner's finding of permanent and total disability (Pet. App. C1-C6). The court of appeals unanimously reversed, holding that the evidence in the record considered as a whole adequately supported the finding that the disability was "permanent" and "total" within the meaning of the statute (Pet. App. B1-B11).

2. Petitioners' variously phrased questions (Pet. 2-5) are reducible to a challenge to the ruling of the court of appeals that the award was based on substantial evidence. The court manifestly understood the controlling legal standards as formulated by this Court in such cases as *O'Keeffe* v. *Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359, *O'Leary* v. *Brown-Pacific-Maxon*, 340 U.S. 504, and *Cardillo* v. *Liberty Mutual Insurance Co.*, 350 U.S. 469. See Pet. App. B3-B6. Since the court below made a "fair

assessment of [the] record on the issue of unsubstantiality" in light of the applicable legal tests (Pet. App. B6-B10), further review is not warranted. *National Labor Relations Board* v. *Pittsburgh Steamship Co.*, 340 U.S. 498, 502.

The petition for a writ of certiorari should therefore be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

MARCH 1969.

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